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IN THE COURT OF APPEAL OF THE STATE OF CALIFORNIA

SECOND APPELLATE DISTRICT

DIVISION FOUR

THE PEOPLE,

Plaintiff and Respondent,

v.

CHRISTOPHER ROBERT
GREENLEE,

Defendant and Appellant.

B268860

(Los Angeles County
Super. Ct. No. KA055428)

APPEAL from a judgment of the Superior Court of Los Angeles County,
Robert M. Martinez, Judge. Remanded with directions.

John L. Staley, under appointment by the Court of Appeal, for
Defendant and Appellant.

Xavier Becerra, Attorney General, Gerald A. Engler, Chief Assistant
Attorney General, Lance E. Winters, Assistant Attorney General, Susan
Sullivan Pithey, and Robert M. Snider, Deputy Attorneys General, for
Defendant and Respondent.

We reconsider this case on remand from the California Supreme Court, which vacated our prior decision and directed us to reconsider in light of *People v. Buycks* (2018) 5 Cal.5th 857 (*Buycks*). We remand the matter to the trial court for resentencing with directions to strike the prior prison term enhancement based on a felony conviction that was reduced to a misdemeanor under Proposition 47. The trial court must also determine on remand whether appellant's two serious felony enhancements should be stricken pursuant to the court's newly-granted discretion under Senate Bill No. 1393 (Stats. 2018, ch. 1013, §§ 1-2) (SB 1393).

DISCUSSION

Following a jury trial in 2002, appellant Christopher Robert Greenlee was found guilty and sentenced to 36 years to life in prison with the possibility of parole for three separate felonies.¹ The sentence included a prior prison term enhancement under Penal Code section 667.5 for appellant's conviction and sentence in a prior case for receipt of stolen property.² The sentence also included two five-year serious felony enhancements under section 667, subdivision (a)(1). In 2015, appellant's conviction in the prior case was reduced to a misdemeanor conviction pursuant to Proposition 47. The trial court denied appellant's request to strike the prior prison enhancement, and we affirmed. Our Supreme Court granted review and remanded to this court for reconsideration in light of *Buycks*. The parties subsequently filed supplemental briefs addressing whether appellant's two serious felony enhancements should also be stricken pursuant to the newly-enacted SB 1393, which became effective January 1, 2019.

¹ The relevant factual and procedural background is set forth in our previous decision, filed February 16, 2017. Appellant was convicted in the present case of first degree burglary, assault with a deadly weapon by means likely to produce great bodily injury, and petty theft with five prior theft-related convictions.

² All further unspecified references are to the Penal Code.

A. *Buycks*

In *Buycks*, the Supreme Court, interpreting the “misdemeanor for all purposes” language of section 1170.18, subdivision (k),³ as added by Proposition 47, held that “the resentencing of a prior underlying felony conviction to a misdemeanor conviction negates an element required to support a section 667.5 one-year [prior prison term] enhancement. A successful Proposition 47 petition or application can reach back and reduce a defendant’s previous felony conviction to a misdemeanor conviction because the defendant ‘would have been guilty of a misdemeanor under’ the measure had it ‘been in effect at the time of the offense.’ (§ 1170.18, subds. (a), (f).) Therefore, if the ‘felony conviction that is recalled and resentenced . . . or designated as a misdemeanor’ conviction becomes ‘a misdemeanor for all purposes,’ then it can no longer be said that the defendant ‘was previously convicted of a felony’ [citation], which is a necessary element for imposing the section 667.5, subdivision (b) [prior prison term] enhancement. Instead, ‘for all purposes,’ it can only be said that the defendant was previously convicted of a misdemeanor. [¶] Consequently, section 1170.18, subdivision (k) can negate a previously imposed section 667.5, subdivision (b) [prior prison term] enhancement when the underlying felony attached to that enhancement has been reduced to a misdemeanor under the measure.” (*Buycks, supra*, 5 Cal.5th at pp. 889-890, fn. omitted.)

As respondent concedes, *Buycks* requires the trial court to strike the prior prison term enhancement based on a felony conviction reduced to a misdemeanor under Proposition 47.

B. *SB 1393*

Appellant contends that his two prior serious felony enhancements should also be stricken under SB 1393. “[W]hen part of a sentence is stricken on review, on remand for resentencing ‘a full resentencing as to all counts is appropriate, so the trial court can exercise its sentencing discretion in light of the changed circumstances.’ [Citation.]” (*Buycks, supra*, 5 Cal.5th at p. 893.)

³ Section 1170.18, subdivision (k) provides in relevant part: “A felony conviction that is . . . designated as a misdemeanor under subdivision (g) shall be considered a misdemeanor for all purposes”

Under the previous version of section 1385, subdivision (b), a court was required to impose a five-year consecutive term for “any person convicted of a serious felony who previously has been convicted of a serious felony” under section 667, subdivision (a), and the court had no discretion “to strike any prior conviction of a serious felony for purposes of enhancement of a sentence under Section 667.” (§ 1385, subd. (b).) On September 30, 2018, the Governor signed SB 1393, amending section 1385, subdivision (b) to allow a court to exercise its discretion whether to strike or dismiss a prior serious felony conviction for sentencing purposes. (*People v. Garcia* (2018) 28 Cal.App.5th 961, 971 (*Garcia*).) In *Garcia*, the court held that SB 1393 applies to all judgments not final as of its effective date of January 1, 2019. (*Garcia, supra*, at p. 973 [““a judgment is not final until the time for petitioning for a writ of certiorari in the United States Supreme Court has passed””].) Respondent concedes that appellant’s judgment is not yet final for purposes of SB 1393.⁴

Respondent contends that remand is unwarranted because the trial court clearly indicated it would not have dismissed the serious felony enhancements even if it had discretion. Respondent relies on authority pertaining to Senate Bill No. 620 (2017-2018 Reg. Sess.), which does not require resentencing when “the record shows that the trial court clearly indicated when it originally sentenced the defendant that it would not in any event have stricken a firearm enhancement.” (*People v. McDaniels* (2018) 22 Cal.App.5th 420, 425.) We are not persuaded that the trial court clearly indicated during sentencing that it would not have stricken the serious felony enhancements, or that it relied on the imposition of these consecutive enhancements in its decision to “extend[] leniency” and impose concurrent sentencing on other counts. Thus, it is appropriate on remand to permit the trial court to exercise its discretion whether to strike the prior serious felony enhancements.

⁴ Ripeness is not at issue because SB 1393 went into effect on January 1, 2019, before this decision was issued.

DISPOSITION

Our prior decision is vacated. The matter is remanded to the trial court with directions to strike the prior prison term enhancement based on a felony conviction reduced to a misdemeanor under Proposition 47. On remand, the court shall conduct a resentencing hearing to consider whether appellant's two serious felony enhancements should be stricken pursuant to SB 1393. In all other respects, the judgment is affirmed. The trial court shall prepare an amended abstract of judgment and send a certified copy to the Department of Corrections and Rehabilitation.

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MANELLA, P. J.

We concur:

WILLHITE, J.

DUNNING, J.*

*Judge of the Orange County Superior Court assigned by the Chief Justice pursuant to article VI, section 6 of the California Constitution.